



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171912

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on March 01, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to both notices of tax intercept issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment itself, whether the evidence is sufficient to sustain 2 FoodShare overissuance claims and whether claim and issue preclusion apply to the second FoodShare overpayment claim.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest an August 2013 notice of FoodShare overissuance and a January 14, 2014 tax intercept notice.

3. Petitioner was previously sent a Public Assistance Collection Unit Levy Issued notice that informed him that PACU was making collection efforts for an overpayment of \$10,504.00 of W-2 benefits. This W-2 benefit overissuance was alleged to have occurred as Petitioner and [REDACTED] were co-parents of 2 minor children, lived in the same household and the household's income was in excess of program income limits for the period of the overpayment – September 2011 through September 2013. Petitioner did appeal that Levy to the Division of Hearings and Appeals. Division of Hearings and Appeals case number LVO/157356.
4. The Division of Hearings and Appeals held a hearing on June 14, 2014 in case #LVO/157356 and issued a decision on August 26, 2014. That decision concluded that Petitioner and [REDACTED] did live together during the time period alleged. That decision was not appealed to the Circuit Court. The Decision was sent to Petitioner at the above address.
5. The Department issued a FoodShare Overpayment Notice dated October 27, 2014 that was sent to Petitioner at an [REDACTED] address in Milwaukee. The notice stated that Petitioner was liable for FoodShare benefits in the amount of \$3191.00 received during the period of January 1, 2013 through August 31, 2013 that the household was not eligible for as household composition had not been reported accurately.
6. A repayment agreement dated November 5, 2014 was sent to Petitioner at the [REDACTED] address and references 2 FoodShare overpayment claims - \$3191 for the period of 1/1/13 to 8/31/13 (# [REDACTED]) and \$2186.00 for the period of 6/26/12 to 12/31/12 (# [REDACTED]). Dunning notices dated December 2, 2014, January 5, 2015 and February 3, 2015 were sent to Petitioner at [REDACTED] address and a [REDACTED] street address – both in Milwaukee. The dunning notices also referenced the 2 claims.
7. There is no [REDACTED] Street in Milwaukee though there is a [REDACTED]. Petitioner has his own home at the above address and has lived there through time periods involved here.
8. Petitioner was sent a tax intercept notice dated March 13, 2015 at a [REDACTED] street address in Milwaukee that informed Petitioner that his taxes could be intercepted to recover an overpayment of \$5377.00. This was for a FoodShare overissuance of \$3191 for the period of 1/1/13 to 8/31/13 and \$2186.00 for the period of 6/26/12 to 12/31/12.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, *Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR, §273.15(g).

These appeal deadlines presume, however, that a petitioner has been provided with an adequate and timely notice. Here the agency had Petitioner's above address as part of the hearing resolved in mid – 2014 (again, LVO/157356). It did not, however, send any of the notices involved here to that address. Those addresses were reported by [REDACTED], they are not Petitioner's address. I cannot, therefore, conclude that Petitioner received any of the notices here thus Petitioner's appeal is timely as to both the overpayment and tax intercept.

The next problem here is that the Department has not provided the FoodShare overpayment notice for the \$2186.00. Thus the record is not sufficient to demonstrate anything with respect to that claim. I cannot just assume it was because of household composition.

Finally, even though timely, there is no relief for Petitioner from the \$3191 for the period of 1/1/13 to 8/31/13 overpayment. This is because of the legal doctrines of claim preclusion (formerly known as "res judicata") and issue preclusion (formerly known as "collateral estoppel"). Claim preclusion requires a final judgment on the merits in a prior proceeding. Issue preclusion requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

In this case the \$3191.00 FoodShare overpayment is based on the same household composition issue as in the W-2 hearing held by the Division of Hearings and Appeals in June 2014. Petitioner argues here that he was not living with [REDACTED] and was unaware that she was receiving benefits. Nonetheless, the issue of household composition has already been decided by the Division of Hearings and Appeals and not appealed, thus the conclusion that Petitioner and [REDACTED] were in the same household is, under claim and issue preclusion, binding on this decision.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as to the 2014 FoodShare overpayment notice and the 2015 tax intercept for claim # [REDACTED] in the amount of \$3191.00 as the notices were not sent to the correct address.
2. That, as to claim # [REDACTED] in the amount of \$2186.00, there is no evidence in the record to show the basis for that claim or that any notice was issued as to Petitioner.
3. That, as to claim # [REDACTED] in the amount of \$3191.00, as the issue at this hearing was household composition, the instant appeal is precluded by the doctrines of claim preclusion and issue preclusion as the household composition issue was decided in a final decision in Division of Hearings and Appeals Case No. LVO/157356.

NOW, THEREFORE, it is

ORDERED

That this matter is remanded to the agency and Department with instructions to rescind claim # [REDACTED] (\$2186) as to Petitioner. If his tax intercept was in excess of the balance due for claim # [REDACTED] that excess must be refunded to Petitioner. These steps must be done within 10 days of this Order.

In all other respects, this appeal is dismissed.

Note: This decision does not in any way reverse the underlying overpayment or liability as to [REDACTED].

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of April, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit